

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

[Court's order whether the case is approved for reporting or not
under Chapter VIII Rule 32 (2) (b)]

Description of the case

Writ Petition No. 34 (SS) of 2003

Sri Inderjeet Singh

----- Petitioner

Versus

Assistant General Manager & Ors.

----- Respondents

Approved for Reporting

Not approved for reporting

Date of Decision: June 1, 2007

Initial of Judge

Reserved

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

Writ Petition No. 34 (S/S) of 2003

Sri Inderjeet Singh S/o Late Sri Karam Chand
R/o 244 Chukhuwala, Dehradun ----- Petitioner

Versus

1. Assistant General Manager, Bank of Baroda
Haldwani, Nainital
2. Regional Manager, Bank of Baroda
Haldwani, Nainital
3. Senior Branch Manager, Bank of Baroda,
Dehradun Branch, P.B. No. 117, Astley Hall, Dehradun
----- Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri P.S. Adhikari, learned Senior Counsel assisted by
Sri B.S. Adhikari, learned counsel for the petitioner and Sri S.K.
Jain, learned counsel for respondent nos. 2 and 3.

By means of this writ petition, the petitioner has prayed to
issue a writ, order or direction in the nature of certiorari for
quashing the order dated 18.10.2002 passed by respondent no. 3,
Senior Branch Manager, Bank of Baroda.

By the aforesaid order, which is impugned in the writ
petition, the petitioner, who was working as peon with the
respondent, was transferred to Dang Branch in District Pilibhit and
was also relieved from Bank of Baroda, Astley Hall, Dehradun on
the same date with the instructions to report to Branch Manager,
Dang Branch, Pilibhit positively on 21st October, 2002. The
petitioner has attacked the transfer order on the following grounds.

First, that he is suffering with the disease of Sciatica and is undergoing treatment under Dr. J.P. Nautiyal, Medical officer (Homeopathic) S.H.D. Doon Hospital, Dehradun. The symptoms of the disease were found sometime in 1996 and still he is suffering with the disease and in case he is compelled to take charge at Dang Branch in District Pilibhit, it will not be possible for him to take treatment of his doctor, who is at Dehradun. The second ground of attack is that in the Dehradun Branch of the Bank, the post of Cash Peon is still vacant and there are number of Peons working in the Dehradun Branch for the period more than the period of the petitioner.

During the course of the argument, learned counsel for the petitioner has brought my attention towards the transfer policy provided for Class III employees of the Bank in the Shastri Award, wherein it is provided under para 536 that, *"in general the policy should be to limit the transfers to the minimum consistent with Banking needs and efficiency. So far as members of the subordinate establishment are concerned, there should be no transfer ordinarily and if there are any transfers at all, they should not be beyond the language area of the person so transferred. We further direct that even in the case of workmen not belonging to the subordinate staff, as far as possible there should be no transfer outside the State or the language areas in which an employee has been serving except of course, with his consent."*

Learned counsel for the petitioner has further submitted that settlement for criteria for Redeployment of Award Staff- 2001 also says that the redeployment of clerical staff will be upto 100 kms. The relevant extract is provided under Clause 2.3 in this respect is quoted hereunder:-

“Redeployment of clerical staff will be up to a distance of 100 kms. within the administrative region or State, whichever is geographically smaller in area.”

The submission of the learned counsel for the petitioner, thus, is that settlement for criteria for Redeployment of Award Staff – 2001 permits the respondents for redeployment of clerical staff within a distance of 100 kms. within the administrative region or State. The petitioner, who is working as Class IV employee should not have been transferred 375 kms. away from Dehradun. So far para 536 of the Shastri Award is concerned, i.e., in relation to the ministerial staff it provides that the transfers should be consistent with the Banking needs and efficiency, however, there should be no transfer ordinarily and if there are any transfers at all, they should not be beyond the language area of the person so transferred. Learned counsel for the petitioner has further submitted that this clause, though applicable for ministerial area, but the principle laid down under this paragraph is clear that a person should not be transferred outside the language area and where the transfer of ministerial staff is not permissible outside the language area, it can be conveniently presumed that the Class IV employee should also not be transferred outside the language area.

However, it is not the case of the petitioner that by transferring the petitioner from Dehradun to Pilibhit, the transfer has been made outside the language area, thus, the petitioner cannot take any benefit of this clause. So far the policy regarding deployment of staff is concerned, when redeployment of clerical staff is permissible under settlement for criteria for Redeployment

of Award Staff – 2001 up to a distance of 100 kms., it will also be presumed that the Class IV employees were also not be transferred beyond the distance of 100 kms. Schedule VI of the said Award also speaks about the deployment of workmen, wherein it is stated that a workman in the Non-Subordinate cadre is liable to be deployed anywhere within the District irrespective of the distance involved. Further in cases, necessitating deployment outside the District, the workman concerned may be deployed to any Branch/ Office of the Bank situated outside the District up to a distance not exceeding 100 kms. from his present place of posting.

The petitioner, who was working in Dehradun, has been transferred to Pilibhit, which is according to the petitioner is 375 kms. away. In any case, the distance is more than 100 kms., so far the ground that the petitioner is suffering with Sciatica is concerned, the treatment which petitioner is getting from Dehradun from a Homeopathic doctor, the petitioner has nowhere stated that such facilities is not available at Pilibhit. In any case, the petitioner is not required to attend every day before the Homeopathic doctor for his treatment and as such this argument has no force.

During the course of argument, petitioner has further prayed that in fact, the transfer order which is impugned in the writ petition is virtually of a penal nature because the same has been passed in view of the order dated 17.09.2002, which is Annexure 5 to the writ petition and 25th September, 2002, which is Annexure 8 to the writ petition.

On 17.09.2002 while rejecting the application of the petitioner for leave, it is stated by the Branch Manager of

Dehradun that for the last more than a year, the petitioner has always been submitting leave applications and medical certificate from the same clinic in a very casual manner and it was observed that while the petitioner was advised rest by the doctor as per medical certificate, it was found that he was roaming in Branch, extension counters and market as reported by the staff, who have seen him there. The doctor, under whom the petitioner was taking treatment, was also contacted by the Bank. It was also mentioned in the letter that for last about one year, the petitioner remained on leave 26 times for 140 days.

In Annexure 8, the petitioner has annexed the letter dated 25th September, 2002, wherein it was stated that the Bank has observed that in the past also the petitioner was in the habit of remaining absent on ground of illness without submitting the needed medical certificates and the prescription from the doctor.

The contention of the learned counsel for the petitioner is that the impugned transfer order has been passed solely on the basis of these two letters and, thus, it is a stigma on the petitioner and amounts to punishment.

The transfer order nowhere states that the petitioner is in habit of remaining absent, and consequently, he is being transferred. In fact, the transfer order is simple without attaching any stigma on the petitioner and as such the order of transfer is not stigmatic. This ground of petitioner also does not have any force.

Learned counsel for the respondents, Sri S.K. Jain has objected and has pleaded that it is the prerogative of the employer

to transfer an employee anywhere within the jurisdiction and the Court should not interfere with the transfer order. It is a well settled law and the Apex Court has also held in a series of cases that the Court generally should not interfere with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time, a public servant is transferred from his present posting. Ordinarily, the Courts have no jurisdiction to interfere with the order of transfer under Article 226 of the Constitution of India, in a matter where on the basis of it no injustice has been caused.

The submission of the learned counsel for the petitioner is that the petitioner has been transferred from Dehradun to Pilibhit in contravention of the guidelines framed under Shastri Award.

This also does not have force as the Apex Court has held in the case of **Union of India & Ors. Vs. S.L. Abbas** reported in **AIR 1993 SC 2444** that the guidelines issued by the Government do not confer upon employee legally enforceable right. Order of transfer made without following guidelines cannot be interfered with by the Court unless it is vitiated by mala fides or is made in violation of statutory provision. Thus, it is clear that the transfer order can be interfered with by the Court only on the ground that the order has been passed mala fide, it is in contravention of statutory rules or the same has been passed frequently just to harass the employee. None of these grounds are available with the petitioner in the present case, which warrants interference of the Court with the impugned order.

Though the guidelines do not have statutory force and the petitioner cannot take benefit of those guidelines yet it is expected

from the respondents to respect the guidelines and pass order as far as possible as per guidelines framed under the Shastri Award in respect of the Bank employees while transferring the employees.

For the reasons and observations made in the body of the judgment, I deem it fit and proper to direct the petitioner to make a representation before the authority concerned within a period of three weeks from today and it is expected from the respondents to pass fresh orders in the light of guidelines frame under the Shastri Award within a period of three weeks from the date of production of a certified copy of this order along with representation, if any, moved by the petitioner. Till 15th July, 2007, or till the representation is decided by the respondents whichever is earlier, the impugned order shall be kept in abeyance.

With these directions, the writ petition is finally disposed of. All the pending applications stand disposed of.

(M.M. Ghildiyal, J.)

June 1, 2007
VKS